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VIA ELECTRONIC FILING

Ms. Jocelyn Boyd
Chief Clerk/Administrator
Public Service Commission of South Carolina
101 Executive Center Dr., Suite 100
Columbia, SC 29210

RE: Power Purchase Agreement between Duke Energy Progress, LLC and
Olanta Solar, LLC - Docket Number: 2016-41-E.

Power Purchase Agreement between Duke Energy Progress, LLC and Dillon
Solar, LLC - Docket Number: 2016-42-E.

Dear Ms. Boyd:

Duke Energy Progress LLC ("DEP") has filed amendments to two Power Purchase Agreements ("PPAs") in the two referenced dockets. In both dockets DEP has sought to protect portions of the amendments as confidential, filing identical initial requests and supplemental memoranda. The Office of Regulatory Staff ("ORS"), on December 5, 2017, filed letters explaining its opposition to the DEP requests. DEP now submits - for consideration in both dockets - this letter responding to the ORS arguments.

In its letter, the ORS implicitly acknowledges that the requests for confidentiality by DEP are consistent with the Commission's prior treatment of such requests. The ORS letter cites *Heater of Seabrook Inc. v. Public Service Commission of South Carolina*, 332 S.C. 20, 503 S.E.2d 739 (1998) for the proposition that it is error for the Commission to solely rely on precedent as the basis for factual determinations. While that is a correct statement of the law, the more relevant precedent is *330 Concord Street Neighborhood Association v. Campsen*, 309 S.C. 514, 424 S.E.2d 538 (1992) in which the South Carolina Supreme Court held that an administrative agency acts arbitrarily when it departs from established precedent without a substantial reason to do so. The Commission has recognized on a number of occasions that the record in a proceeding must provide a justification for a change in policy. See Order No. 2009-353 in Docket No. 2008-286-WS; Order No. 2004-510 in Docket No. 2004-6-G.



DEP submits that no reason has been presented to the Commission to justify a change in its practice of protecting the confidentiality of negotiated agreements between DEP and entities that are Qualifying Facilities ("QFs") under the Public Utility Regulatory Practices Act. The ORS letter argues that customers have a direct interest in the terms of the PPAs because the cost of purchased power is passed on to customers. That interest, however, has been present since the Commission first decided in Docket No. 1980-251-E that it would encourage electric utilities to negotiate individual contracts with QFs, and the same interest was considered in Docket No. 1990-425-E when the Commission determined that it would protect the confidentiality of coal contracts. See DEP Memorandum in Support of Confidential Treatment, at pp. 4-5. The costs of purchased power and coal are both passed on to customers, but only after those costs are audited by the ORS and reviewed by the Commission. Any customer who wants to intervene can obtain access to confidential documents by signing non-disclosure agreements. This system, a product of years of precedent, has worked well and no substantial reason has been shown to change it.

The ORS letter also cites the fact that SCE&G has recently filed solar QF PPAs for approval without requests for confidentiality. There is no record of the reason for SCE&G's decision not to seek protection, and it is speculative to assume what the reason was. The fact that SCE&G has decided not to request confidentiality does not provide a reason for the Commission to depart from its precedent.

Thank you for your consideration of our response to the ORS opposition to our request for confidentiality.

Yours truly,

Frank R. Ellerbe, III

cc: Jeffrey M. Nelson, Chief Counsel, Director Legal Services (via email)
Heather Shirley Smith, Deputy General Counsel (via email)
Rebecca J. Dulin, Senior Counsel (via email)